Filed 8/23/13 In re T.L. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re T.L. et al., Persons Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. CHRISTOPHER L., Defendant and Appellant.	A137160 (Humboldt County Super. Ct. No. JV120161-1)

Humboldt County Department of Health and Human Services (the department) filed a petition pursuant to section 300 of the Welfare and Institutions Code[1] on behalf of T.L. and Christina L. The petition contained the following three allegations under section 300, subdivision (b) against Christopher L. (father): an unsafe house, engaging in ongoing domestic abuse, and continued drug abuse.[2] At the jurisdictional hearing, the juvenile court sustained the allegations of an unsafe house and drug abuse. Subsequently, at the end of a contested dispositional hearing, the court declared T.L. and Christina dependents of the court and authorized their placement in the home of a relative.

[1] All further unspecified code sections refer to the Welfare and Institutions Code.

[2] The petition also contained allegations under section 300, subdivisions (b) and (j) as to Nicole L. (mother). Mother is not a party to this appeal.

On appeal, father argues that insufficient evidence supports the jurisdictional finding of ongoing drug use. Father also challenges the dispositional order and maintains insufficient evidence supports the removal of his children from his custody and the court abused its discretion when including a requirement in his reunification services plan that he participate in a domestic violence program. We are not persuaded by father's arguments and affirm the juvenile court's orders.

BACKGROUND

The Petition and Detention

Mother and father were married in 2009, and lived in a home with Christina, T.L., and their half brother, B.F.[3] On September 1, 2012, father was arrested for possessing stolen property, being a felon in possession of ammunition, being a felon in possession of a firearm, and violating probation. On this same date, mother was arrested for willful cruelty to a child and for being under the influence of a controlled substance.

The incident on September 1, 2012, began when mother ran into a neighbor's house about 5:00 p.m. and exclaimed that father was threatening the children's life with a gun.[4] The neighbor told Veronica Meggerson, a social worker, that when mother entered her residence mother was speaking incoherently for five to ten minutes and exclaimed that "they're going to come now" because father was holding the girls hostage. The neighbor called 911, and the police arrived. The police, according to the neighbor, spent 30 minutes outside of the apartment trying to coax father to come out. Father yelled that he had the girls and then exited the apartment alone. The neighbor revealed that she often heard father yelling "and saying things like, 'shut the fuck up' and 'come here you little bastard.' "

After father was arrested, the police brought mother back to her apartment and the neighbor saw the inside of the apartment. The neighbor reported that the house was—as

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[3] Father in this appeal has not challenged any of the juvenile court orders involving B.F.

[4] The record does not disclose the neighbor's name. Meggerson spoke to the neighbor on September 4, 2012.

it usually was—filthy; there were clothes and trash throughout the residence. The apartment, according to the neighbor, smelled of urine, moldy laundry, and marijuana. The bathroom, living room, kitchen, and parents' bedroom contained "water bongs." She observed that T.L. was wearing a shirt with no bottoms and Christina was wearing a shirt and shorts, which appeared to belong to B.F.

The police report stated that on September 1, 2012, the police responded to a 911 call, surrounded the apartment, and called father on the public address system to come outside the apartment. Father emerged and the police handcuffed him and entered the residence. An officer noticed that the youngest child was not wearing any clothing and all of the children were "filthy in appearance." The officers found a stolen shotgun in the apartment and shotgun shells. The report disclosed that the kitchen garbage can was overflowing with garbage and dirty diapers, and the refrigerator had an inadequate supply of food. "The kitchen stove had chunks of food harden[ed] on the surface, and dirty pots and pans that had food still remaining inside with insects crawling on the food. . . . On the dining room table located within the children's reach was a [six-inch] knife . . . . Inside the laundry room, [was] a machete, which was within reach of the children." The beds in the children's rooms had no bedding. Full and empty beer cans were on the banister in the upstairs hallway. The officer also observed "mounds of clothing stacked from floor to ceiling." Inside the parents' bedroom, the officer found "dangerous knives lying on the floor and in the closet, and marijuana smoking apparatuses sitting on top of tables, which were in reach of children."

The report indicated that an officer spoke to mother and she appeared under the influence of methamphetamine. The police arrested mother and mother voluntarily spoke to the police. She said that she had been under the influence of methamphetamine for approximately 14 days and was still under its influence. She stated that during this period a friend would sometimes watch their children when he came over to their apartment to get methamphetamine. She said that during the past 14 days, father and she would be upstairs asleep and the three children would be downstairs sleeping on the couch unsupervised or supervised by one of their friends. She explained that her friends and

children were downstairs "due to [the] large amount of smoke, caused [by] her and [father] smoking marijuana upstairs."

On September 5, 2012, the department filed a petition on behalf of T.L. and Christina, alleging that they came within the provisions of section 300, subdivisions (b), with regard to father, and subdivisions (b) and (j) with regard to mother.[5] At that point in time, both Christina and T.L. were under the age of four years. The children were detained and placed in the home of a non-extended family relative. The petition stated that father was the biological father of T.L. and Christina. It alleged that the children had suffered or were at a substantial risk that they would suffer serious physical harm or illness as a result of the parents' inability or failure to supervise or protect them adequately; by the willful or negligent failure of the parents to provide them with adequate food, clothing, shelter, or medical treatment; and by the inability of the parents to provide regular care for them due to the parents' mental illness, development disability, or substance abuse.

The petition contained three specific allegations under section 300, subdivision (b). Under b-1, the petition alleged that the parents had ongoing substance abuse issues and that mother was arrested on September 1, 2012, for being under the influence of methamphetamines while the children were under her care. Allegation b-2 specified that the parents had engaged in ongoing domestic violence and that on September 1, 2012, father had a gun and threatened the lives of the children. B-3 stated that the family's residence was unsafe for the children and that law enforcement on September 1, 2012, had found drug paraphernalia, weapons, and ammunition in the home and within the reach of the children. Under subdivision (j), of section 300, the petition alleged that in 2008, the court had sustained counts as to mother involving substance abuse with regard to B.F.

The department filed its detention report on September 6, 2012. In addition to recounting the details of the incident on September 1, 2012, and the information provided

[5] A separate petition against mother was filed regarding B.F.

by the neighbor, the report detailed prior contact the department had with mother and father. The department had received seven prior referrals regarding mother and six prior referrals regarding father. Of the six prior referrals for father, three were not investigated and three were assigned for investigation and were determined to be "unfounded."

The juvenile court held the detention hearing on September 6, 2012, and appointed counsel for mother, father, and the minors. Mother and father denied the allegations in the petition. The court granted father's request to be elevated to presumed father status. The court ordered the department to provide the parents with a parent education program, drug monitoring and random drug screens, a substance abuse assessment and a recommended treatment program, and domestic violence counseling. The court also ordered anger management counseling for father. The court detained the children.

The Jurisdictional Hearing

On September 24, 2012, the department filed its jurisdictional report. The report indicated that father had previous convictions for various offenses that included petty theft, inflicting corporal injury on a spouse, receiving known stolen property, and battery. On November 19, 1997, he was placed in custody for possession of a controlled substance for sale, and on April 29, 2005, he was convicted of possession of a controlled substance. He also had a number of parole violations.

The court held the contested jurisdictional hearing on September 24, 2012. Counsel for father argued that the record did not support the allegations that he had an ongoing substance abuse problem and had engaged in ongoing domestic violence. He submitted on the allegation that the residence was unsafe for children.

At the end of the contested jurisdictional hearing, the juvenile court sustained the allegations of ongoing substance abuse and having an unsafe home as to both parents. The court noted that mother commented repeatedly that both of them had engaged in "very heavy drug abuse." The court also found that "the condition of the residence certainly supports and corroborates the inference that both adults are using drugs in excessive ways and are not attending to the ordinary business of life and particularly childcare." The court found that the evidence was insufficient to establish ongoing

domestic violence. The court also sustained the allegation under section 300, subdivision (j), for mother.

The juvenile court declared T.L. and Christina dependents of the court and set the dispositional hearing for October 9, 2012. The two girls remained out of the parents' home.

The Dispositional Hearing

The department prepared its dispositional report, which the court received at the dispositional hearing. The report stated that "mother and father have both explained they have recently relapsed on methamphetamines." Father, according to the report, "admitted to previous domestic violence in a past relationship," but denies any domestic violence with mother ever occurred. The report noted that father was chairing a local Narcotics Anonymous meeting and was attending multiple meetings per week. Mother also maintained that father had hit her in the face with the butt of a gun and, on another occasion, hit her in the head and the ribs while the children were present. The service plan for father, attached to the report, stated, among other things, that father was to complete a domestic violence program to address anger management and accept responsibility for his actions.

Father filed an issue statement and asserted that there was no basis for requiring him to complete a 52-week domestic violence program. He pointed out that the juvenile court at the jurisdictional hearing struck the allegation regarding domestic violence between the parents.

After continuing the hearing once, the juvenile court held the dispositional hearing on October 17 and 18, 2012. Father and his attorney were present at the hearing, although father did not testify.

Jennifer H., father's girlfriend from 2001 to 2004, testified that father and she had a nine-year-old son together. While they were living together for three years, she never observed father disciplining their child inappropriately, although he had spanked their son. When asked whether she had known father to use drugs, she responded, "Yes," and confirmed he used "[p]ot and meth." She said that he used these drugs nine years ago

when they were together and claimed that he did not use these drugs now. When asked during cross-examination whether she knew that father told the social worker he relapsed in 2008 and took methamphetamine, Jennifer denied knowing that. She also said that she did not know that he told the social worker about relapses in 2010 and 2012. She insisted that she still did not have any concerns with her son having unsupervised contact with father.

Jennifer also denied knowledge of many of father's arrests and convictions. She declared that she did not know that he had been convicted of possession of a controlled substance in 2005 and of a battery in 2008. She had little knowledge about the incident on September 1, 2012, and stated that she did not know he was arrested for receiving known stolen property or for being a felon addict in possession of a firearm.

A neighbor, Deborah H., testified that she used to be friends with mother and was still friends with father.[6] When she saw mother the day after the incident, on September 2, mother told her that father had punched her in the face. She maintained that mother's face had no marks. She stated that she had observed father with the children and that he was a loving father and played with his children. She described the house as a mess and stated that mother never cleaned. She claimed that father tried to clean the house. She testified that mother smoked methamphetamine the past six months and that father did not. She admitted that father never complained to her about mother's use of drugs and never tried to remove the children from the home.

Meggerson, the social worker, briefly testified. She stated that father was a secretary at Alcoholics Anonymous and that "[h]e has kind of got back on sobriety." She acknowledged that father had been in constant contact with his children.

Laurie Maldonado, the ongoing social worker, testified. She first had contact with mother and father in 2009, regarding a referral related to B.F. of general neglect. Father was with mother while B.F.'s case was ongoing but he was not B.F.'s parent and was not a party to the case. At that time, father, mother, and B.F. were living at the Multiple

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[6] The record does not name the neighbor who called the police after mother ran into her house on September 1, 2012, and Deborah appears to be a different neighbor.

Assistance Center (the MAC), a transitional housing program. While there, father grabbed another person's child by the arm. Father claimed that this child had been slapping other children, including B.F. The case manager at the MAC expressed concern about father. She stated that father struggled with "anger management" and that he had "been observed to be controlling towards females." The case manager reported that father would get "in the face of others" and was loud, which was "seen as being very intimidating." She commented that mother and father did not have a healthy relationship because father appeared very controlling and mother was submissive.

Maldonado noted that father had completed the program of Alcohol and Other Drugs (AOD), the county counseling program for substance abuse, in 2005, and that he suffered relapses in 2008, 2010, and 2012. Mother reported "many" incidents of domestic violence but did not specify the number. After a violent incident, mother would temporarily stay with a friend and then return to the home she shared with father. Mother told Maldonado about a violent incident in June 2012, and a prior caretaker of the children reported seeing mother with a black eye. The public health nurse and the prior caretaker also told Maldonado that T.L. declared, "Daddy hit mommy," and "Daddy tried to kill mommy." B.F., according to the prior caretaker, said, "Daddy hit mommy," and "Daddy kill mommy."

Maldonado had not personally supervised any visits between father and the girls. The children were currently placed with the maternal grandmother, and the grandmother indicated that the children's visits with father were going well. The reports were that father acted appropriately with the children and that they were happy to see him. Father had told Maldonado that the home had been cleaned but she had not seen it. She would not recommend returning the children to father at this point because of his history of substance abuse and domestic violence. She stated that she was concerned about father's denial of any domestic violence because it showed that he did not understand the impact of his conduct on his children. His denial placed Christina and T.L. at risk of harm for continued domestic violence. She noted that the children were displaying aggressive behavior. Maldonado pointed out the contradiction between father's claim that he and

mother had not engaged in domestic violence and his filing after September 1, 2012, a request for a restraining order against mother.

Mother testified at the hearing. Mother was shown three photographs, which she claimed were taken by her friend on September 2, 2012. The photographs, according to mother, depicted injuries she suffered from being hit by father a day earlier, on September 1. Mother stated that father gave her the black eye shown in the photograph when he slammed the end of the rifle on her face.[7] A second photograph of her left arm showed a lump on her arm; mother asserted that father "stomped on" her arm. The third photograph was of her right knee, which had bruises. She declared that father had kicked her in the knee. The children, according to mother, were watching when father inflicted these injuries on her. She estimated that father had hit her 10 times or more. Father, according to mother, had been emotionally abusive in the past and had called her a "whore" and other names. Mother admitted that she never called the police after any abusive incident and never went to the hospital. She also acknowledged that she never told the police on September 1, 2012, that father had hit her with a rifle. She maintained that she never reported any of the physical abuse to the police because she was scared.

Mother asserted that she had seen father physically discipline the children. She explained that when B.F. hit his younger sister, father became angry and would hit B.F. with his open hand across B.F.'s head. She recalled another incident where father took B.F. by the collar of his shirt and threw him against the door. She described father as an angry person during the four years she lived with him and declared that she was afraid of him.

After hearing all of the evidence but prior to final arguments, the juvenile court examined the three photographs of mother and stated that a domestic violence prevention program was an appropriate component of father's case plan. The court explained as follows: "Tentatively, I intend to follow the recommendation of the department and most specifically the recommendation of domestic violence counseling. . . . And, to me, it's

[7] The only firearm recovered in the apartment by the police was a Charles Daly 12 gauge pump action shotgun.

over—it's beyond clear and convincing, it's overwhelming that father is an aggressive person. He has multiple criminal convictions for this type of behavior. I can't conceive of any hope of success of a case plan that does not provide for the—that does not recognize that he is a man who commits domestic violence. . . ."

Counsel for father argued that the court at the jurisdictional hearing had stricken the domestic violence allegation. Counsel asserted that mother had claimed domestic violence at the jurisdictional hearing and no additional evidence had been submitted to support this claim. The photographs submitted by mother did not establish domestic abuse and counsel pointed out that, other than mother's testimony, there was no evidence that the photographs had been taken on September 2, 2012. Additionally, the police arrested father for being an ex-felon in possession of a weapon and for child endangerment and the police report did not indicate any injury to mother. Counsel requested that the children be returned to father's care.

At the conclusion of the hearing, the juvenile court found, among other things, that clear and convincing evidence established that returning the children to their parents' custody would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children. The court declared the children dependents of the court and found that the decision to remove the children was based on the parents' substance abuse, the family's unsafe home, and family violence. Reunification services were offered to the parents. The court adopted the case plan recommended by the department, which included a requirement that father complete a domestic violence program. The plan also required father to complete a mental health assessment and an AOD assessment, and to comply with drug testing requests.

Father filed a timely notice of appeal from the juvenile court's orders.

DISCUSSION

I. *The Jurisdictional Finding of Substance Abuse*

The juvenile court assumed dependency jurisdiction over T.L. and Christina as to both mother and father based upon two separate allegations under section 300, subdivision (b): b-1, ongoing substance abuse, and, b-3, having an unsafe home. In

addition, the court sustained the allegation under section 300, subdivision (j), as to mother. Father does not challenge any of the jurisdictional findings as to mother or the jurisdictional finding of an unsafe home as to him. He does, however, contend that the evidence did not support the finding of ongoing substance abuse as to him.

Section 300, subdivision (b) provides that the juvenile court may adjudge a person to be a dependent child of the court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." The juvenile court's jurisdictional finding that a child is a dependent of the court must be supported by a preponderance of the evidence. (§ 355, subd. (a); see also *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.)

On review, we determine whether the juvenile court's jurisdictional finding was supported by substantial evidence. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) In so doing, we "must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Under this standard, the juvenile court, not this court, assesses the credibility of witnesses, resolves conflicts in the evidence, and determines where the weight of the evidence lies. (*Id.* at pp. 52-53.) "We affirm the rulings of the juvenile court if there is reasonable, credible evidence of solid value to support them. [Citations.]" (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319.)

As father acknowledges, we must affirm the juvenile court's ruling if sufficient evidence supports *any* allegation under section 300. (§ 300; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) At the jurisdictional hearing, father submitted to jurisdiction with regard to having an unsafe home. Furthermore, mother has not challenged any of the jurisdictional findings and the unchallenged findings as to mother

support dependency jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake*).)

Although father concedes that the court properly assumed jurisdiction over T.L. and Christina, he maintains that the allegation of a dirty home could be remedied by family maintenance and would not require, by itself, the removal of T.L. and Christina from the home. (See *In re Paul E.* (1995) 39 Cal.App.4th 996, 1005 [removal order reversed when jurisdiction based solely on the unsanitary condition of the home and the specific hazards identified were trivial].) He also argues elsewhere that he and mother are no longer together and thus the children could safely be returned to him, alone.

The present case differs significantly from *In re Paul E., supra*, 39 Cal.App.4th 996, the case cited by father. *In re Paul E.* involved a messy house and minor hazardous conditions such as "a propeller protruding from a boat located outside the house, a lamp socket with a short, and a small child's plastic wading pool in the backyard filled with dirty water." (*Id*. at p. 1000.) Indeed, the *Paul E.* court characterized the hazards as "trivial to the point of being pretextual." (*Id.* at p. 1005.) In *In re Paul E.*, the initial disposition did not remove the child from the parents' home and the social worker filed a supplemental petition to have the children removed because of the parents' purported lack of progress and failure to comply with the case plan. (*Id.* at pp. 999-1000.) The *Paul E.* court held that chronic messiness alone, apart from unsanitary conditions, could not support removal. (*Id.* at p. 1005.)

In contrast, here, there was no initial determination that T.L. and Christina could safely remain in the home and their removal was not based solely on father's failure to comply with the case plan. More significantly, unlike the situation in *In re Paul E.*, the unsafe conditions of father's home were not limited to messiness, dirtiness, and minor hazards. The police report stated that the garbage can in the kitchen was overflowing with garbage and dirty diapers and the garbage had "a very foul odor emitting from it, along with several flies." The kitchen stove had food hardened on the surface and dirty pots and pans had insects crawling inside them. The downstairs bathroom had dirty diapers scattered along the floor and a strong odor was emanating from them. Half full

and empty beer cans were on the banister. "There were also mounds of clothing stacked from floor to ceiling."

Furthermore, the hazards in father's home were not limited to messiness and unsanitary conditions. The police report indicated that the police found inside father's apartment a stolen shotgun and shotgun shells, a six-inch knife on the table within the children's reach, a machete in the laundry room within the children's reach, dangerous knives on the floor and in the closet of the parents' bedroom, and marijuana smoking apparatuses on tables and within the children's reach.

Given the hazards and unsanitary conditions of the home, we do not necessarily agree with father that the dispositional order would have been different had the juvenile court dismissed the b-1 allegation of ongoing substance abuse. However, since we agree that the finding of jurisdiction under b-1 might impact other dependency orders, we will exercise our discretion and reach the merits of father's challenge that substantial evidence did not support the finding of his ongoing substance abuse.

Father asserts that the evidence demonstrated that mother had a substance abuse problem but the evidence did not show that he had an ongoing substance abuse problem. He cites *In re Rocco M.* (1991) 1 Cal.App.4th 814, which states that past conduct may be probative of current conditions but the focus under section 300 "is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.' [Citations.]" (*In re Rocco M.*, at p. 824, fn. omitted.)

We note that courts are split on the question whether past conduct, alone, is sufficient for a jurisdictional finding under section 300, subdivision (b). Some courts have held that past conduct is sufficient. (See, e.g., *In re David H.* (2008) 165 Cal.App.4th 1626, 1644; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1435.) Other courts have held that past conduct is insufficient to support jurisdiction, and that harm at the time of the jurisdictional hearing or future harm is required. (E.g., *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023-1024.) We need not address this conflict because we

conclude the finding of ongoing substance abuse is supported under the standard set forth in *In re Rocco M., supra,* 1 Cal.App.4th 814.

The record supported a finding that father's past drug use has continued. Father was arrested for substance abuse in November 1997, and was convicted for possessing a controlled substance in April 2005. On September 1, 2012, the police found drug paraphernalia in the home and mother stated that both father and she had drug problems. Mother told the police that during the 14 days preceding the incident on September 1, 2012, father and she would be upstairs and their children were downstairs alone or with the parents' friends, "due to [the] large amount of smoke, caused [by] her and [father] smoking marijuana upstairs."

Father contends that mother is an addict and her statements are unreliable. Mother's comments, however, were corroborated by the fact that the police found "marijuana smoking apparatuses" on tables within the children's reach. The court could discredit father's claim that only mother was using drugs and conclude that they were both using drugs, especially since there is nothing in the record to indicate that father tried to protect the children by preventing their exposure to drug use in the home. Accordingly, the foregoing evidence was sufficient to establish father's continued use of drugs.

Father contends that the record did not show that he had a current substance abuse problem as defined in the DSM-IV-TR.[8] (See *Drake, supra,* 211 Cal.App.4th 754.) Father maintains that the department failed to present any evidence showing that there was a medical diagnosis of substance abuse or that he abused substances as defined in the DSM-IV-TR, and such that proof is required under *Drake*.

In *Drake, supra,* 211 Cal.App.4th 754, the juvenile court found jurisdiction over a child based on the father's smoking medical marijuana. When considering the father's

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[8] The "DSM-IV-TR" refers to the "American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR)." (*Drake, supra,* 211 Cal.App.4th at p. 765.) The current edition is DSM-5, which was published in 2013.

appeal, the Second District distinguished between " 'substance use' " and " 'substance abuse.' " (*Id.* at p. 764.) Section 300, subdivision (b) requires that there must be a finding that the parent at issue is a substance abuser. (*Drake*, at p. 764.) Thus, the appellate court explained that the mere usage of drugs by a parent, without more, is not a sufficient basis on which dependency jurisdiction can be found. (*Ibid.*) The *Drake* court held that "a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the DSM–IV–TR. The full definition of 'substance abuse' found in the DSM–IV–TR describes the condition as '[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)[;] [¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)[;] [¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)[; and] [¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).' (DSM–IV–TR, at p. 199.)" (*Drake*, at p. 766.)

Once the evidence establishes substance abuse, the juvenile court is in the best position to determine whether the abuse results in a substantial risk of physical harm to the child. (*Drake, supra,* 211 Cal.App.4th at p. 766.) As to children of "tender years," the *Drake* court stated "the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*Id.* at p. 767.) The *Drake* court held that the record before it did not

establish that the father was a substance abuser. There was no evidence that the father failed to fulfill his work obligations, suffered from substance-related legal problems, drove his vehicle while under the influence of drugs, or continued to use drugs in the face of social or interpersonal problems caused by such use. (*Id.* at pp. 767-768.) Additionally, there was no evidence that the father was unable to supervise or protect his child adequately. To the contrary, the evidence showed that the father's child was healthy, was receiving good care, and had not been exposed to marijuana or second-hand marijuana smoke. (*Id.* at pp. 768-769; see also *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346 [finding of detriment unsupported when no evidence of substance abuse or link between use of marijuana and parenting skills].)

In contrast to the situation in *Drake*, here the record contains evidence linking father's drug use to an inability to supervise or protect his children and thus a "failure to fulfill" his "major role" obligation at "home." (See DSM-IV-TR, at p. 199, cited in *Drake*, *supra*, 211 Cal.App.4th at p. 766.) The record therefore supported an implied finding that father's substance abuse is a problem as defined by the DSM-IV-TR.

The juvenile court expressly found that the conditions of the home supported a finding that father's drug abuse was linked to an inability to attend "to the ordinary business of life and particularly childcare." The incident on September 1, 2012, was, according to mother, triggered when father and she argued and father began to pace back and forth inside the apartment while holding a firearm. The police found a firearm in the home. Not only father's behavior, but the conditions of the residence supported the inference that father was abusing drugs and was unable to attend "to the ordinary business of life[,] particularly childcare." Once the police were able to enter the apartment, they found the children were "filthy in appearance." The home was filled with overflowing garbage and dirty diapers. The police recovered a shotgun, dangerous knives, marijuana smoking apparatuses, and a machete within easy reach of the children.

Father argues that that the condition of the home could not be attributed to his substance abuse and cites the testimony of Deborah, a neighbor. Deborah insisted that mother never cleaned the house and that father tried to clean it. This evidence was not

presented at the jurisdictional hearing and, even if it had been, the juvenile court was not obligated to believe this witness's testimony. Furthermore, the house was not simply filthy. As already noted, the children were filthy and father had exposed them to dangerous hazards, such as knives and a machete. A proper inference was that this unsafe home was partially a result of father's substance abuse problem.

Accordingly, we conclude that the record supports the juvenile court's finding that father has a substance abuse problem that places T.L. and Christina at substantial risk of harm.

II. *The Dispositional Order Removing T.L. and Christina from the Home*

Father contends insufficient evidence supports the juvenile court's order removing T.L. and Christina from his custody.

The fundamental right to the care and custody of one's child is protected by the constitution and statute. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76.) To remove children from a parent's custody, the juvenile court must find by clear and convincing evidence that (1) there is a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if the child is returned home, and (2) there is no "reasonable means" by which the child can be protected without removal. (§ 361, subd. (c)(1).) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361., subd. (c)(1).)" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) We review the finding under the standard of substantial evidence. (See, e.g., *In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695.)

In the present case, the evidence supports the first requirement that clear and convincing evidence shows that there is a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if the child is returned home. Father argues that the girls are healthy and developmentally on target and they have an affectionate and appropriate relationship with him. This factor, however, is not dispositive. " ' "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as

present circumstances. [Citation.]' [Citation.]" (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.)

The juvenile court found that the girls should be removed based on father's drug use, conditions in his home, and domestic violence. Father maintains that he is no longer with mother and that the children could safely be returned to him. He asserts that he had the home cleaned and that the social worker never followed up to see whether the home had been cleaned or whether he had completed his mental health assessment or AOD appointment. She also had not inspected his attendance at Alcoholics Anonymous and Narcotics Anonymous. Father maintains that the department could therefore not properly assess whether he had made only minimal progress toward alleviating or mitigating the causes necessitating intervention.

Contrary to father's argument, the department presented clear and convincing evidence that T.L. and Christina could not safely remain in father's custody. In addition to the evidence presented at the jurisdictional hearing and discussed above, evidence at the dispositional hearing showed that father had completed the AOD program in 2005, but had suffered relapses in 2008, 2010, and 2012. Section 300.2 provides that a home "free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child."

In addition to father's drug abuse, the evidence of domestic violence supported the removal order. Mother testified that father had assaulted her on numerous occasions. At the dispositional hearing, the social worker, Maldonado, testified that father had grabbed another child by the arm while living at the MAC in 2009, and the case manager at the MAC expressed concern that father struggled with "anger management." Mother told Maldonado about father's hitting her in June 2012, and a prior caretaker of the children reported seeing mother with a black eye. The public health nurse and the prior caretaker also told Maldonado that T.L. declared that father had "hit mommy" and "tried to kill mommy." The children were displaying aggressive behavior. Despite this evidence of anger issues, father denied having any current anger issues and opposed efforts to engage him in treatment.

Father argues that the juvenile court did not sustain the allegation of domestic violence at the jurisdictional hearing and complains that the "department was doing an end run around the juvenile court." He asserts, without any citation to authority, that T.L. and Christina could not be removed for reasons the juvenile court previously found legally insufficient to sustain.

The juvenile court at the dispositional hearing did not consider the removal of T.L. and Christina on the same evidence presented at the jurisdictional hearing. The evidence of father's aggression at the dispositional hearing was, as the juvenile court stated, "beyond clear and convincing [and] overwhelming." Furthermore, removal was proper based on father's drug use, risk of relapse, and denial of any problem.

With regard to the second requirement, father claims the removal order was not necessary because reasonable alternatives existed and the court did not consider less drastic alternatives. (See, e.g., *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [reversed order removing child from home based on mother's inability to keep the home clean when a reasonable alternative existed such as requiring the removal of all animals from the home or the use of a homemaker service]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171-172 [reversed dispositional order when court failed to consider less drastic measures and no evidence that violent confrontations between the parents actually endangered the children], superseded by statute on another issue.) He asserts that the juvenile court could have permitted T.L. and Christina to remain in his custody under a family maintenance plan with continued department supervision. Family maintenance services may be provided to support the family and address problems that could otherwise lead to removal. (§ 16501, subd. (g).)

As father argues, the juvenile court did not expressly state there were no reasonable alternatives, but it did find there had been reasonable efforts to eliminate the need for removal. When the court does not state the factual basis for an order, we may infer the basis from the evidence. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219; see also *In re Basilio T., supra,* 4 Cal.App.4th at p. 171 [apply harmless error].) In the present case, we infer that the court considered less drastic alternatives to removal

and the record supports the finding that removal was the only reasonable means of protecting T.L. and Christina, who were both under the age of four when first removed from the home. Father was aware of mother's drug use and did nothing to protect the children. Father has his own substance abuse problem and a significant history of aggression and crime. Father denied that he had any aggression issues or that there was a domestic violence issue in his present relationship. He thus lacked insight into the problems that caused the girls' removal. The social worker stated that it was too early to return the girls to father's care. It was reasonable for the juvenile court to conclude that removal was necessary until father had sufficient time to address these problems and gain insight.

We thus conclude substantial evidence supports the juvenile court's dispositional order removing T.L. and Christina from father's home.

III. *The Reunification Requirement to Participate in a Domestic Violence Program*

Father contends that the trial court erred when it ordered him to participate in a domestic violence program as part of his reunification services case plan. He maintains that the evidence does not support this requirement as the juvenile court did not sustain the domestic violence allegation at the jurisdictional hearing and the reunification plan must attempt to eliminate only those conditions that led to the court's finding that T.L. and Christina are persons described by section 300. He maintains that the department should have filed a supplemental petition under section 342 or 387 and presented evidence to support the domestic violence allegation.

At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor's parents to facilitate reunification of the family. (§ 361.5, subd. (a); Cal. Rules of Court, rule 5.695(h)(1).) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citations.]" (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher*).)

A reunification or service plan " ' "must be appropriate for each family and be based on unique facts relating to that family." ' [Citation.]" (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.) The plan must be specifically tailored to the needs of the parents and designed to eliminate those conditions that led to the loss of custody. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) The court may consider any relevant evidence for disposition to help it determine how to facilitate reunification for a family and what would be in the child's best interests. (See *In re Corey A.* (1991) 227 Cal.App.3d 339, 346-347.) Thus, the department did not have to file a supplemental petition in order to have the juvenile court consider the need for father's plan to include a program in domestic violence.

A contention similar to the one raised here by father was addressed and rejected in *Christopher, supra,* 50 Cal.App.4th 1001. In *Christopher,* the juvenile court sustained allegations pursuant to section 300, subdivisions (b) and (g), and did not sustain an allegation that the father had alcohol-related problems that negatively affected his ability to care for the child. The court, however, ordered the father to undergo a substance abuse evaluation, to participate in any recommended treatment, and to submit to random drug or alcohol testing. (*Christopher,* at p. 1005.)

In *Christopher, supra,* 50 Cal.App.4th 1001, the father contended on appeal that the drug and alcohol condition imposed was beyond the court's jurisdiction because drug and alcohol abuse was not a basis on which the petition was sustained. The Fifth District noted that the juvenile court at a dispositional hearing must order child welfare services to facilitate reunification and the court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*Id.* at p. 1006.) Further, when the court is aware of parental deficiencies " ' "equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated," ' " "the court may address them in the reunification plan." (*Id.* at p. 1008.) The court in *Christopher* observed that the record demonstrated that the father had a substance abuse problem creating a potential risk of interfering with his ability to care for the child. (*Id.* at p. 1007.) The court concluded that

the father's "substance abuse was an obstacle to reunification that had to be addressed in the reunification plan." (*Id.* at p. 1008.)

Here, evidence at the dispositional hearing established that father has a history of aggressive behavior. Requiring father to attend a domestic violence program will help him comply with the remainder of the reunification plan and aid him in becoming able to provide a suitable home for T.L. and Christina. Accordingly, the juvenile court did not abuse its discretion in ordering father to attend a program and counseling related to domestic abuse.

DISPOSITION

The orders of the juvenile court are affirmed.

_____
Brick, J.*

We concur:

_____
Kline, P.J.

_____
Haerle, J.

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.